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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/716,223    11/22/96    VAN SCHOUWENBURG    G    961170

IM22/1102

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EXAMINER

SHERRER, C

ART UNIT	PAPER NUMBER
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1761

31

DATE MAILED:

11/02/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
08/716,223

Applicant(s)

Schouwenburg

Examiner

Curtis E. Sherrer

Group Art Unit

1761



☒ Responsive to communication(s) filed on Aug 22, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1, 3, 9-12, and 14-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3, 9-12, and 14-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**Part III DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3, 9-12 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The claims use the phrase “substantially retain the properties of unprocessed raw meat” and “substantially do not denature.” and their scope is unknown.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 12, 14-15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Weiss et al (U.S. Pat. No. 4,772,477) for the reasons set forth in the last Office Action.

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*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 9-12 and 14-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiss et al in view of Weiner for the reasons set forth in the last Office Action.

*Response to Arguments*

8. Applicant's arguments filed 08/22/00 have been fully considered but they are not persuasive.

9. Applicant has submitted declaratory evidence to show that the process and product of Weiss et al do not anticipate the claimed invention. Specifically, the Wijngaards Declaration states that the blended salami disclosed by Weiss et al is "blended evenly and homogeneously to distribute the components" and this "is generally done in the bowl chopper" where the meat is no longer reduced in size and this "mixing is a relatively gentle process . . . ." (¶ 2c.). This process is contrasted with the instant process whereby the meat is massaged and/or tumbled. During this process components are added and "evenly distributed" and the meat is kept intact.

(¶¶ 3 and 4). Declarant states that the claimed process produced a meat that “is covered with a clearly visible mass of creamy, paste-like, and very tacky substance.” Id.

10. Declarant provides no data to support the distinction. The processes are described in relative terms that do not allow for a firm comparison. It is not seen why the Weiss et al. process would not produce meat pieces that are covered with solubilized proteins. The claims are not directed to any amount of solubilized protein or any holding characteristics of the final product. The Declaration fails to distinguish massaging and/or tumbling from that which occurs in slow chopping. It seems reasonable that at least tumbling, i.e., the turning over, of the meat would occur.

11. Again it is noted that Weiss et al do not mention the use of a chopper and Applicant has supplied no evidence that salami, or the other disclosed meats, are conventionally mixed by use of a chopper at slow speeds.

12. General results of testing salami are given in ¶ 5 but no background procedure is given and it is not even clear if the process is that of Weiss et al. General characteristics of a commercial product are given without specific methods by which it was produced. These details are necessary to ensure that the claims are commensurate in scope with what is tested.

13. Lastly, no arguments are presented as to why the claimed invention is nonobvious over the cited art.

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*Conclusion*

14. No claim is allowed.
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.
16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The **fax phone number** for this Group is (703)-305-3602.
17. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a long horizontal flourish extending to the right.

Curtis E. Sherrer  
Primary Examiner  
November 1, 2000